1883.

SUPREME COURT OF THE UNITED STATES.

No. 277.

THE SCHOONER NAPOLEON, HER TACKLE, &c., DAVID COLDEN MURRAY, CLAIM'T, &c., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 277.

THE SCHOONER NAPOLEON, HER TACKLE, &c., DAVID COLDEN MURRAY, CLAIM'T, &c., APPELLANT,

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1863

1 THE UNITED STATES OF AMERICA,
Southern district of New York, ss:

THE UNITED STATES OF AMERICA, libellants, appellees,
vs.
THE SCHOONER NAPOLEON, her tackle, &c., David Colden Murray, cl'm't, appellant.
} In prize.—17,166.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this first day of July, in the year [SEAL.] of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

GEO. F. BETTS, *Cl'k.*

JOHN SHERWOOD,
Proctor and Advocate for Claimant and Appellant.

2 United States district court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THE SCHOONER "NAPOLEON," tackle, &c.
} In prize.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of information in prize filed herein by E. Delafield Smith, attorney of the United States for the southern district of New York, on behalf of said libellants and of the naval captors in interest, respectfully represents to this honorable court:

First. That the schooner or vessel called the "Napoleon" was captured as lawful prize on or about the fourteenth day of March, 1862, and off Newbern, North Carolina, by the United States sound squadron, Flag Officer S. C. Rowan, United States navy, commanding.

Second. That the schooner or vessel called the "Napoleon" were, at the time of such capture, and are now, rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said schooner or vessel called the "Napoleon" have been brought to the port of New York, and are now at said port, and within the jurisdiction of this honorable court.

Fourth. That by reason of the premises, the said schooner or ves-

sel called the "Napeleon," her tackle, apparel, and furniture, became and are liable to condemnation and forfeiture as lawful prize, and should be condemned and forfeited as lawful prize to the libellants.

That all and singular the premises are and were true, and within the jurisdiction of this honorable court; in attestation whereof, the said attorney exhibits the said vessel's papers and the documents, &c., found on board, together with the testimony of the witnesses, duly taken in preparatorio by the prize commissioners appointed by this honorable court, which are or will be duly filed in the registry of this court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said schooner or vessel called the "Napoleon," and her tackle, apparel, and furniture, in this behalf to be made, and that all persons interested in the said vessel may be cited to answer in the premises; and that all due proceedings being had therein, this honorable court may be pleased to decree for the con demnation and forfeiture aforesaid, and that the said schooner, her tackle, apparel, and furniture, may be condemned as lawful prize to the use of the said United States.

Dated New York, June 2d, 1862.

E. DELAFIELD SMITH,
United States District Attorney.

3 Filed 3d June, 1862.
Monition returnable 24th June, 1862.

4 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the third day of June, in the year of our Lord one thousand eight hundred and sixty-two, by E. Delafield Smith, esquire, U. S. district attorney, on behalf of the United States of America, against the schooner Napoleon, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said schooner, her tackel, &c., may, for the causes in the said libel mentioned, be condemned as forfeited to the use of the United States:

You are therefore hereby commanded to attach the said schooner, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel. that they be and appear before the said court, to be held in and for the southern district of New York, on the 24th

day of June inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this third day of June, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-sixth.

GEO. F. BETTS, *Clerk.*

E. DELAFIELD SMITH,
U. S. District Attorney.

5 In obedience to the within monition, I attached the schooner Napoleon, her tackle, &c., therein described, on the 3d day of June, 1862, and have given due notice to all persons claiming the same, that this court will, on the 24th day of June inst.,) if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ROB'T MURRAY. *U. S. Marshal.*

Dated June 24th, 1862.

Monition ret'ble 24th June, 1862.

E. DELAFIELD SMITH,
U. S. Attorney.

Filed 24th day of June, 1862.

6 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 27th day of May, in the year of our Lord one thousand eight hundred and sixty-two. Present: The honorable Samuel R. Betts, district judge.

In the matter of the schooner Napoleon, taken as a prize.

On reading and filing the report of the prize commissioners with the affidavit of D. Colden Murray, and on motion of the U. S. district attorney, it is ordered by the court, that the schooner Napoleon, her tackle, &c., be appraised by the prize commissioners; that said commissioners forthwith file their appraisal with the clerk of this court; that said schooner, tackle, &c., be thereafter sold by the marshal, under the superintendence and direction of the prize commissioners; that the marshal receive the purchase-moneys, make a proper return of the sales, and deposit the gross proceeds of such sales in the registry of the court. All claims and charges of any kind against said proceeds to be presented to and allowed by the court before payment

thereof. This order is without any prejudice to any right of D. Colden Murray, the affiant above named, and is founded upon the report of the prise commissioners.

(Signed) SAM'L R. BETTS.

7 Endorsed: In prize. Vol. 17, No. 166. United States district court for thesouthern district of New York, in the matter of the schooner Napoleon taken as a prize. Order directing appraisement and sale.

E. DELAFIELD SMITH,
Proctor for U. S.

Filed the twenty-seventh day of May, 1862.

8 U. S. District Court.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," &c., taken as a prize.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The undersigned, prize commissioners for the said district, respectfully report to this court:

That in pursuance of an order made and entered in the above cause on the 27th day of May, 1862, they have enquired into the value of the above-named schooner "Napoleon," and have caused the same to be examined by experts, whose affidavits are hereto annexed.

That, as appears from the said affidavits, the said vessel is a centre-board schooner, of about 260 tons, and is about five years old, and in fair order.

That, from the said affidavits hereto annexed, the said schooner, with her apparel, sails, and tackle, is of the value of $8,000, that being, in their judgement, acccording to the weight of evidence, and they therefore appraise the same at that sum.

All of which is respectfully submitted.

New York, *June* 24, 1862.

E. H. OWEN,
HENRY H. ELLIOTT.

9 U. S. District Court.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard Poillon, being duly sworn, says that he is, and for a number of years has been, a ship-builder at the city of New York, and is well acquainted with vessels and their values.

That on or about the 19th day of June, 1862, at the request of the

prize commissioners of this district, he examined the above-named vessel, lying at the wharf of the Union stores in Brooklyn.

That the said vessel is a centre-board schooner, with three masts, about 260 tons, and is about five years old; that she is not coppered so far as could be seen; that she is in a fair condition, although a little chafed.

That the said schooner is worth, including sails and apparel, the sum of eight thousand dollars, which sum deponent believes to be the fair market value thereof.

RICHARD POILLON.

Sworn to before me June 24, 1862.

[SEAL.] ANDREW R. CULVER,
Not. Pub.

10 U. S. District Court.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew Craft, being duly sworn, says that he is connected with surveyor's office in the custom-house in the city of New York, and is employed therein as measurer of vessels; that he was for many years a ship-builder at the city of New York, and is well acquainted with vessels and their values.

That at the request of the prize commissioners of this district, deponent has examined the above-named schooner "Napoleon" for the purpose of ascertaining her value; that the said vessel is a centre-board schooner, of about 260 tons, and is about five years old; that her sails and rigging are in fair order, and she has one boat, three anchors, and two chains, in good order; that the said vessel is not coppered so far as deponent could see, and is in fair order, but is a little chafed.

That to the best of deponent's judgment and knowledge of the vessels and their values in the market at the present time, the said schooner is worth the sum of five thousand seven hundred dollars, and that that sum is her fair value.

ANDREW CRAFT.

Sworn to before me June 16, 1862.

JOSEPH H. GRAY,
Notary Public.

11 U. S. District Court.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William W. Story, being duly sworn, says that he is an appraiser of vessels for the underwriters at the city of New York, and was for a

number of years a shipping master and owner of vessels at the said city; that he is well acquainted with vessels and their values at this port.

That at the request of the prize commissioners of this district, deponent has examined the above-named schooner "Napoleon" for the purpose of ascertaining her value; that the said vessel is a centre-board schooner, of about 260 tons, and is about five years old; that her sails and rigging are in fair order, and she has one boat, three anchors, and two chains, in good order; that the said vessel is not coppered so far as deponent could see, and is in fair order, but is a little chafed.

That to the best of deponent's judgment and knowledge of the vessels and their values in the market at the present time, the said schooner is worth the sum of five thousand seven hundred dollars, and that that sum is her fair value.

W. W. STORY.

Sworn to before me June 16, 1862.

JOSEPH H. GRAY.
Notary Public.

12 Endorsed: U. S. District Court. The United States *vs.* the schooner "Napoleon," &c., taken as a prize. Prize commissioners' report of value of vessel. E. J.

14 District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the third day of June, in the year of our Lord one thousand eight hundred and sixty-two, by E. Delafield Smith, U. S. district attorney, on behalf of the libellants, against the schooner "Napoleon," her tackle &c., for the reasons and causes in the said libel mentioned, and praying that said schooner, her tackle &c., may be condemned and adjudged to be lawful prize to said libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or his surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattles, and lands:

And whereas, also, a claim is about to be filed in said cause by David Colden Murray:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or, upon an appeal, by the appellate court.

D. COLDEN MURRAY.
JOHN SHERWOOD

Taken and acknowledged this 24th day of June, 1862, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Sherwood, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN SHERWOOD

Sworn to this 24th day of June, 1862, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 24th day of June, 1862.

GEO. F. BETTS, *Clerk.*

Filed the 24th day of June, 1862.

15 U. S. District Court.

THE UNITED STATES OF AMERICA
ag't
THE SCHOONER NAPOLEON, her tackle, &c.

SIR: Take notice that I appear for David Colden Murray, the claimant of the above-named schooner, her tackle, apparel, and furniture.

Yours, &c.,

JOHN SHERWOOD,
Proctor for Claimant.

June 24th, 1862.
To E. DELAFIELD SMITH,
District Att'y.
GEO. F. BETTS, Esq., *Clerk, &c.*

Endorsed: 17 166. U. S. dist. court. The United States *vs.* the schooner Napoleon, her tackle, &c. Notice of appearance of claimant.

JOHN SHERWOOD,
Proctor, &c., for Claim't.

Filed, 24th June, 1862.

16 District court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, and furniture, David Colden Murray, claimant.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The claim of David Colden Murray, a loyal citizen of the United

States of America, resident of the city of New York, doing business as a shipping merchant in South street in said city, owner of seven-eighths of the schooner Napoleon, her tackle, apparel, and furniture, respectfully shows to the court:

That the claimant is a loyal citizen of the United States of America; that he now resides, and for many years has resided, in the city of New York, doing business as a shipping merchant in South street, in said city of New York.

That prior to the rebellion against the government of the United States, that he was engaged in running vessels to ports on the Gulf of Mexico and to southern ports on the Atlantic ocean, and that he owned and ran several vessels to the ports of Newbern and Wilmington, in the State of North Carolina.

17 That on the 11th day of April, 1860, one William P. Moore, junior, of Newbern, North Carolina, who was then owner of seven-eighths of the said schooner Napoleon, duly executed and delivered to this claimant a mortgage upon the said seven-eighths of said schooner, to secure to this claimant the payment of such drafts as he might draw upon this claimant, to an amonnt not exceeding ten thousand dollars, with a condition that in case of the default of said Moore to provide for the payment of said drafts, that this claimant might then and therefrom take possession of and sell at public auction the said seven-eighths of said schooner, her tackle, apparel, and furniture.

That on the 15th day of September, 1860, the said Moore, being in default for the non-payment of his drafts upon, and accepted by, this claimant for an amount exceeding the sum of nine thousand dollars, and this claimant, having duly demanded the payment thereof, which was neglected to be made by said Moore, that the said Moore then and thereupon duly executed and delivered to this claimant in consideration of his aforesaid liabilities, a bill of sale of seven-eighths of said schooner Napoleon, her tackle, apparel, and furniture, in the words and figures following:

To all to whom these presents shall come, greeting:

Know ye that I, William P. Moore, jr., of Newbern, State of North Carolina, owner of $\frac{7}{8}$ of the schooner or vessel called the Napo-

18 leon, of the burthen of 260 92–95 tons or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid, before the sealing and delivery of these presents, by D. Colden Murray, of the city, county, and State of New York, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said D. Colden Murray, his executors, administrators, and assigns, seven-eighths of the said sch'r or vessel, together with seven-eighths the masts, bow-sprit, sails, boat, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the enrolment of which said schooner vessel is as follows, to wit:

No. ———.

Enrolment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licencing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same.

having taken or subscribed the
required by the said
act, and having that

citizen of the United States, and
owner of the ship or vessel called the
of whereof
is at present master, and as he hath
19 is a citizen of the United States,
and that the said ship or vessel was

and

having certified that the said ship or vessel has
deck and mast,
and that her length is ,
her breadth ,
her depth ,
and that she measures tons,
and that she is
has and head; and the said

having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said has been duly enrolled at the port of

Given under hand and sealed at the port of
this day of in the year one thousand eight hundred and

20 To have and to hold the said seven-eighths of said vessel, and appurtenances thereunto belonging, unto him, the said D. Colden Murray, his executors, administrators and assigns, to the sole and only proper use, benefit, and behoof of him, the said D. Colden Murray, his executors, administrators, and assigns forever. And I, the said Wm. P. Moore, jr., have, and by these presents do, promise, covenant, and agree for my heirs, executors, and administrators, and assigns, to warrant and defend the said seven-eighths of said vessel and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said Wm. P. Moore, jr., have hereunto set my hand and seal this fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty.

WM. P. MOORE, JR. [SEAL.]

Sealed and deliverd in the presence of and acknowledged before—

[SEAL.] WM. G. BRYAN,
Notary Public, ex-officio.

And this claimant further saith, that he refers to the original bill of sale of said schooner Napoleon, her tackle, apparel, and furniture, to or by him produced on the hearing before this honorable court.

And this claimant further saith, that shortly before the breaking out of the rebellion, the said schooner was running from New-
21 bern to some port, or ports, in the West India islands, and that this claimant endeavored to have the said schooner brought to the port of New York, that he might have taken possession of her, as he was entitled to do, as owner of seven-eighths of said schooner.

This claimant denies that said schooner Napoleon was captured as lawful prize; and he denies that she was, at the time of her seizure, rightfully subject to capture as prize; and he denies that as such she should be condemned or forfeited to the use of the libellant; and he denies that she was captured of *of* Newbern, but alleges, on his information and belief, that she was, as she had been for a long time previous to the occupation of the city of Newbern by the troops of the United States, lying at a wharf of said city, in the river Trent, above the railroad bridge, and that she was not used, or engaged, either as a privateer or in running the blockade, or in any other unlawful purpose or employment.

That this claimant, at the commencement of the rebellion, had endeavored to obtain possession of said vessel as the owner of seven-eighths thereof; and that if she had not been seized by the officers of the government of the United States, that he would, as he believes, have obtained such possession as the lawful owner thereof.

And this claimant excepts to the jurisdiction of this honorable court, as a prize court, under the facts and circumstances of this case, and claims the restoration to him of the said schooner, her tackle, apparel, and furniture as the owner of seven-eighths thereof; or, in
22 case of sale of said vessel, that seven-eighths of the proceeds thereof be paid over to this claimant, and together with his costs.

D. COLDEN MURRAY.
JOHN SHERWOOD,
Proctor for Claimant and Advocate.

CITY, COUNTY, AND STATE OF NEW YORK,
Southern District of New York, ss:

David Colden Murray, of the city and county of New York, being duly sworn, makes this his test oath.

He hereby testifies to the verity of the above claim; also, that the

facts and circumstances embraced in the above claim are the truth in connection with the rights of this deponent as owner of seven-eighths of the schooner Napoleon, her tackle, apparel and furniture; that the seven-eighths of said schooner Napoleon, did belong prior to, and at the time of seizure, and still does belong, and if restored, will belong, to this deponent; that this deponent is, and always has been a loyal citizen of the United States of America, and resident of the city of New York.

D. COLDEN MURRAY.

Affirmed before me this 27th day of June, 1862.

WM. S. HASCALL,
Notary Public, New York city.

23 Endorsed: In prize, 17,166. U. S. district court. The United States *vs.* the schooner Napoleon, her tackle, &c. Claim of D. Colden Murray, claimant.

JOHN SHERWOOD,
Proctor for Claimant.

Filed 27th June, 1862.

24 U. S. district court.

THE UNITED STATES
vs.
THE "SCHOONER NAPOLEON," her tackle, apparel, &c.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The petition of intervention of Commodore S. C. Rowan, commander of the naval forces of the United States in the sounds of North Carolina, and of the officers and men of the several vessels included in his said command, respectfully represents:

That they were the naval captors of the property which has been brought in, and is the subject-matter of adjudication herein; and as such captors, they are equally interested with the libellants in the said adjudication, and the lawful issues thereof.

They aver that all and singular the averments in the libel herein contained are just and true, and they join in the prayer thereof, for the decree of the honorable court, of the condemnation of said captured property as lawful prize of war.

And these intervenors do further pray, that after the said decree shall have been duly rendered herein, (unless the said property shall have been previously sold by interlocutory order,) that the same may be sold pursuant thereto; and under execution duly issued
25 thereon, and the proceeds of such sale after payment of the

costs and expenses of these proceedings, may be deposited in the manner prescribed by law.

And thereupon, that this honorable court will proceed to render a final decree of the distribution of the proceeds of said captured property upon the evidence and the report of the prize commissioner, taken and returned pursuant to the requirements of the statutes of the United States. And in the event that the said captured property, or any portion thereof, shall have been appropriated by the libellants herein to their own use, upon an appraisal thereof, that the amount of such appraisal may, by the terms of said decree, be included as part and portion of the sum to be distributed.

F. N. UPTON,
Counsel for the Captors.

June, 18, 1862.

Endorsed: 17, 166. Dist. court of the United States. The United States *vs.* the schooner "Napoleon," her tackle, &c. Intervention of captors.

F. N. UPTON,
Proctor and Counsel.

Filed Aug. 4, 1862.

26 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

Present, the honorable Samuel R. Betts, district judge.

THE UNITED STATES, &c.,
vs.
THE SCHOONER NAPOLEON, her tackle, &c. } 17 166.

This cause coming on to be heard, Mr. Andrews, ass't U. S. district attorney, reads libel testimony in preparatorio, and argues on behalf of libellants for the condemnation of the vessel as lawful prize of war.

Mr. Sherwood (sworn) denies facts set up in the proofs; reads answer and argues on behalf of Mr. D. Colden Murray, the claimant.

Mr. Upton, for naval captors, argues in reply.

Papers submitted.

C. A. V.

27 U. S. district court.

In the matter of the schooner Napoleon and her cargo, taken as prize.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Frank S. Wells, being duly sworn, says: That he is an acting master in the U. S. navy; that he was present at the capture of the schooner "Napoleon," on March 14, 1862, off Newbern, North Caro-

lina. That when said vessel was captured, she had been deserted by her officers and crew, and there was no person found on board of her at the time of her capture. That ——— Anderson, seaman in the U. S. navy, was also present at said capture, as deponent is informed and believes, and is now, as the deponent believes, at the navy yard, New York.

FRANK S. WELLS,
Act'g Master U. S. Navy.

Sworn to before me this 24th day of April 1862.
STEWART L. WOODFORD,
Notary Public in New York City.

See order for examination on the back of this:

28 Endorsed: U. S. district court. The United States *vs.* the schooner Napoleon, &c. Affidavit of F. S. Wells. E. Delafield Smith, U. S. dist. att'y.

On reading within affidavit, and on motion of E. Delafield Smith, U. S. dist. att'y, it is ordered that Frank S. Wells, acting master, ——— Anderson, seaman in U. S. Navy, be examined by the U. S. prize commissioners in preparatorio,

SAM'L R. BETTS.

April 24, 1862.

29 District court of the United States for the southern district of New York.

Deposition of Frank S. Wells, a witness produced, sworn, and examined in preparatorio, on the 25 day of April, in the year eighteen hundred and sixty-two, at the office of the U. S. prize com'rs, on the standing interrogatories established by the district court of the United States for the southern district of New York; the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq'r, U. S. district att'y, in behalf of the captors of a certain ship or vessel called the "Napoleon."

1. To the 1st interrogatory he says: I was born in Hartford, Conn. I now live at Norwich, Conn. I have made it my home there 20 years. I am a citizen of the United States. I owe allegiance to the United States. I am married. My family reside in Norwich.

2. To the 2d interrogatory he says: I was not on board the capturing vessel, nor on board the boat which made the capture. I was within a mile or two of the prize when she was captured.

3. To the 3d interrogatory he says: The seizure was made

30 on the 14th of March last, off the town of Newbern, N. C.; the vessel and cargo were brought to New York. She had no commission authorizing her to make prizes, as I am informed. She was seized as belonging to the rebels, she having been used as one of their harbour defences, and has several times run the blockade between the Neuse river and the West Indies.

4. To the 4th interrogatory he says: She had on board, when she

was captured, seven different national ensigns or flags; they were taken from on board of her by the commander of the U. S. gunboat Stars and Stripes. One of the flags found on board was confederate; the others were Spanish, French, English, United States, and two others, not now recollected. I cannot say why they were on board; but the reasons why are "obvious;" they were to be made useful, of course, in running the blockade and deceiving the blockading squadron.

5. To the 5th interrogatory he says: There was no resistance made, and no guns fired. She had been abandoned by all hands, leaving only her arms, which consisted of 3 24-pound guns and one 32-pounder. I am not certain, however, about their calibre. They were all taken out of her by the commander of the squadron,
31 Capt. Rowan, and taken on shore at Newbern. She was captured by the entire sound squadron, under command of Commander Rowan, and consisting of the flag-ship "Philadelphia," Capt. Rowan; gunboats, as follows: "Stars and Stripes," Capt. Worden; "Louisiana," Capt. Murray; "Hetzel," Capt. H. K. Davenport; "Delaware," Capt. S. P. Quackenbush; "Comm'd Perry," Capt. C. W. Flusser; "Valley City," Capt. J. C. Chaplin; "Underwriter," Capt. A. Hopkins; "Com'd Barney," Capt. R. T. Renshaw; "Hunchback," Capt. E. R. Calhoun; "Southfield," Capt. C. F. W. Behm; "Morse," Capt. Peter Hays; "Brincker," Capt. G. E. Giddings; "Lockwood, Capt. Geo. W. Graves.

The captured vessel was a merchant vessel, but, at the time of capture, engaged in the harbor defence of Newbern. I do not know who owned her; no one claimed her.

The capturing vessels were all ships of war, and carried guns as follows:

"Philadelphia," one 32-pounder; "Stars and Stripes," four 8-inch guns and one 20-pounder Parrott; "Louisiana," two 32 do., and two 8-inch guns; "Hetzel," two, 1 9-inch, 1 long 32-pounder; "Delaware," 1 9-inch gun, 1 32-pounder; "Com'r Perry," two 9-
32 inch and one 32-pounder; "Valley City," four 32-pounders; "Underwriter," one 9-in. gun, and one 80-pound rifle; "Com'r Barney," two 9-inch, one 32-pounder; "Hunchback," two 9-inch, one 100-pound Parrott, one 32-pounder; "Southfield," same as the last; "Morse," two 9-inch; "Brincker," one 30-pound Parrott; "Lockwood," one 80-pound rifle.

The arms opposed to our force at the time of capture were much larger in number than the guns of the squadron—the several batteries mounting, in all, 63 guns, mostly heavy calibre, and some of them heavy rifle guns.

6. To the 6th interrogatory he says: The squadron had commissions to take prizes issued by the government of the United States. I do not know positively which particular vessel or boat's crew boarded the captured vessel first. Commander Rowan said she was captured by the entire squadron.

7. To the 7th interrogatory he says: The name of the vessel taken is the Napoleon. I do not know who commanded her, or anything

about him—I mean the captain. I do not know anything further in reply to this interrogatory.

33 8. To the 8th interrogatory he says: The tonnage is something over 300 tons. I know nothing further in reply to this interrogatory.

9. To the 9th interrogatory he says: I did not belong to the company of the captured vessel.

10. To the 10th interrogatory he says: I never saw the vessel until after she was captured. I know nothing further in reply.

11. To the 11th interrogatory he says: I know nothing in reply to this.

12. To the 12th interrogatory he says: I know nothing in reply to this. I was informed that her last voyage was from Cuba to Newbern last August.

13. To the 13th interrogatory he says: I know nothing in reply to this.

14. To the 14th interrogatory he says: I know nothing in reply to this.

15. To the 15th interrogatory he says: I know nothing in reply to this.

16. To the 16th interrogatory he says: I know nothing in reply to this.

17. To the 17th interrogatory he says: I know nothing about any bills of lading, excepting a bill of lading brought on by me as prize master of a cargo now aboard, which cargo was put on board at Newbern after the capture of the city, and consists of prize property seized by the capturing squadron, the names of which I have already given; which bill of lading, specifying the cargo, is among the vessel's papers brought on and left with the prize commissioner by me.

34 18. To the 18th interrogatory he says: I know nothing of any such papers.

19. To the 19th interrogatory he says: The latitude and longitude of the capture I cannot give accurately, without examination. The capture was made off Newbern, and any chart will give latitude and longitude. I know nothing further in reply.

20. To the 20th interrogatory he says: I know nothing in reply to this. No papers were found on board that I know of.

21. To the 21st interrogatory he says: I did know all about the blockade and the war.

22. To the 22d interrogatory he says: The port was under an order of blockade when this vessel was captured. I saw at Newbern a pilot who resided there, and knew the facts, who told me that the Napoleon had run in out past the blockading squadron several times; his name is Westervelt. I know nothing further in reply to this.

23. To the 23d interrogatory he says: I know nothing in reply to this.

24. To the 24th interrogatory he says: I have already stated what I know in reply to this question.

25. To the 25th interrogatory he says: I know nothing in reply to this.

26. To the 26th interrogatory he says: I have sustained no loss by the seizure.

27th. To the 27th interrogatory he says: I know of no insurance.

35 28. To the 28th interrogatory he says: I know nothing in reply.

29. To the 29th interrogatory he says: I know nothing in reply to this.

30. To the 30th interrogatory he says: I know nothing in reply to this.

31. To the 31st interrogatory he says: I know nothing in reply to this.

32. To the 32d interrogatory he says: I know nothing in reply to this.

33. To the 33d interrogatory he says: I know nothing in reply to this.

34. To the 34th interrogatory he says: I know nothing in reply to this.

35. To the 35th interrogatory he says: I know nothing in reply to this.

36. To the 36th interrogatory he says: I know nothing in reply to this.

37. To the 37th interrogatory he says: I know nothing in reply to this.

38. To the 38th interrogatory he says: There were 4 mounted guns on board; they were either 3 24-pounders and one 32-pounder, or one 24-pounder and 3 32-pounders; I do not know which. No ammunition was found on board; she was so armed as a battery for harbor defence. There was nothing else found on board of the character enquired about in this interrogatory.

39. To the 39th interrogatory he says: I can say nothing more in reply to this than what I have already stated. She was without doubt used, or prepared to use, as a harbor defence by the rebels.

36 40. To the 40th interrogatory he says: I know nothing in reply to this interrogatory.

41. To the 41st interrogatory he says: I have already stated all I know in reply to this question.

42. To the 42d interrogatory he says: I know nothing in reply to this.

43. To the 43d interrogatory he says: I know nothing in reply to this.

FRANK S. WELLS.

Subscribed and sworn to this 25th day of April, A. D. 1862, before me.

HENRY H. ELLIOTT,
U. S. Com'r in Prize.

37 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I. Henry H. Elliott, one of the prize commissioners appointed by the district court of the United States for the southern district of New York, in and for the said district, do hereby certify that the foregoing deposition of Frank S. Wells, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced, the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed my official seal at the city of New York, this 25th day of April, in the year of our Lord, one thousand eight hundred and sixty-two.

HENRY H. ELLIOTT,
U. S. Prize Com'r.

38 District court of the United States, for the southern district of New York:

Deposition of Charles W. Anderson,, a witness produced, sworn, and examined in preparatorio, on the 25th day of April, in the year eighteen hundred and sixty two, at the office of E. H. Owen, U. S. prize commissioner, on the standing interrogatories established by the district court of the United States for the southern district of New York; the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq., U. S. district attorney, in behalf of the captors of a certain ship or vessel called the "Napoleon."

1. To the 1st interrogatory he says: I was born in Philadelphia, and have always lived there. I owe allegience to the U. S. government. I am unmarried.

2. To the 2d interrogatory he says: I was not present at the capture of the vessel concerning which I am now examined. I was a seaman attached to the Burnside expedition, on board of the U. S. steamer "Hetzel." carrying two guns. Davenport was the lieutenant commanding. I do not recollect his first name.

3. To the 3d interrogatory he says: The vessel captured
39 was captured at the same time that Newbern, North Carolina, was taken. She was lying at that place. I think it was about the 14th of March, 1862, that we came to anchor about 12 miles below the city, where the vessels landed the troops. We laid there until early the next morning, and then got up anchor and steamed along

as near to the shore as possible, shelling different places where we thought there might be any fortifications or batteries, and then proceeded up towards the city. We got there about four hours before the troops did, because a railroad bridge had been burned so the troops could not cross. We went about a mile above the bridge where the schooner captured was lying, and then came to anchor. I saw the schooner lying near the bridge as we steamed by. She was captured at the same time, with the rosin and cotton lying on the wharf. The first time I saw her in the possession of our men was, I think, on the 1st of April, when I was detailed by Lieut. Davenport, of the "Hetzel," to go on board of her and help bring her into New York. She was brought into this port, and arrived here, I think, a week from yesterday, the 17th of this month. I heard at Newbern and on board, as we were coming into New York, that she had been fitted out as a southern privateer. I don't know how many guns she carried.

The capture was made because she was enemy's property,
40 and because we had obtained possession of Newbern, where she was lying.

4. To the 4th interrogatory he says: I understood that she was a a southern privateer. I saw no colors on board.

5. To the 5th interrogatory he says: She was captured by the fleet—no particular vessel done it. We were all U. S. vessels.

6. To the 6th interrogatory he says: The capturing vessel had authority to act in the capture. I do not think the "Napoleon" was condemned.

7. To the 7th interrogatory he says: The vessel taken was called the "Napoleon." We did not capture any of the crew that belonged to her. I do not know her captain's name. I do not know anything about him.

8. To the 8th interrogatory he says: I suppose the "Napoleon" is of about two hundred tons burthen. I don't know anything about her crew.

9. To the 9th interrogatory he says: I was one of the crew detailed to bring her into the port of New York.

10. To the 10th interrogatory he says: I first saw the "Napoleon" as we were sailing along shore towards Newbern. She was lying at anchor near the railroad bridge that was burned. My attention was drawn towards her, because there were three or four places
41 on fire near by, and I thought she would be burned. I do not where she was built, nor by what names she has been called.

11. To the 11th interrogatory he says: The vessel was lying at Newbern when she was captured. She had no cargo on board when she was taken. The rebel soldiers had been living in her for some time before I went on board, and there remained some biscuit and flour and a box of herrings. A crew, composed of men from different vessels, went on board and cleaned her out, and took her up to the wharf where the rosin and cotton lay. The rosin and cotton were then put on board. I don't know the quantities of either, but there was a good deal. Everything for her voyage to New York was then put on board. All this was some time, I think, in March, 1862.

I then went on board April 1, 1862, and the next day she was towed down to Hatteras inlet, and thence she came into New York.

12. To the 12th interrogatory he says: I know nothing of the matters herein inquired of.

13. To the 13th interrogatory he says: I have already answered this interrogatory as fully as I can.

14. To the 14th interrogatory he says: The goods sent to New York on the Napoleon were captured by the U. S. forces at Newbern, North Carolina, at the time Newbern was captured. The cotton was used as a battery in front of the city. The rosin was piled up on the wharf; I don't know who owned it.

42 15. To the 15th interrogatory he says: I have no knowledge or information of the subject herein inquired of.

16. To the 16th interrogatory he says: I have already answered this interrogatory as fully as I am able.

17. To the 17th interrogatory he says: I know nothing about any bills of lading.

18. To the 18th interrogatory he says: I know nothing of the matters inquired of in this interrogatory. I have no interest in the vessel.

19. To the 19th interrogatory he says: I do not know the degrees of latitude or longitude where the capture was made, nor the exact time. I only know it was made at the taking of Newbern, and that the Napoleon was lying at anchor at that place near the railroad bridge which runs across from the city to the other side of the river.

20. To the 20th interrogatory he says: I don't know of any papers of any kind relating to the "Napoleon" that were on board of her at the time she was captured.

21. To the 21st interrogatory he says: At the time of her capture, as I have already said, the Napoleon was lying at anchor at Newbern. That place was blockaded, but the "Napoleon" was not trying to run the blockade, as she was at anchor.

22. To the 22d interrogatory he says: I know nothing of the matters herein enquired of.

23. To the 23d interrogatory he says: I know nothing of the matters herein enquired of.

43 24. To the 24th interrogatory he says: I have heard that the "Napoleen" ran the blockade at Hatteras inlet two or three times. I don't know exactly when, but it was some time ago. It was the general report on board of our vessel and throughout the fleet.

25. To the 25th interrogatory he says: I do not know whether or not the "Napoleon" has ever before been seized as prize.

26. To the 26th interrogatory he says: I have sustained no loss by the capture of the "Napoleon."

27. To the 27th interrogatory he says: I know nothing of any insurance.

28. To the 28th interrogatory he says: The "Napoleon" was not loaded when captured; she was lying at anchor in Newbern. The cargo was put on board of her afterwards by the fleet, and was taken from the wharf at Newbern, as I have before stated.

29. To the 29th interrogatory he says: I think the rosin and cotton that was put on board the Napoleon was produced in some part of the State of North Carolina. It was found at Newbern.

30. To the 30th interrogatory he says: The rosin and cotton was put on board directly from the shore.

31. To the 31st interrogatory he says: I know nothing of the matters herein inquired of.

32. To the 32d interrogatory he says: No papers were carried away to my knowledge from the Napoleon.

33. To the 33d interrogatory he says: Bulk was not broken on the voyage from Newbern to New York.

34. To the 34th interrogatory he says: I know nothing of the matters herein inquired of.

44 35. To the 35th interrogatory he says: I know nothing of the matters herein enquired of.

36. To the 36th interrogatory he says: The Napoleon was lying at anchor when she was captured.

37. To the 37th interrogatory he says: I know nothing of the matters herein enquired of.

38. To the 38th interrogatory he says: I do not know, but I think there were some guns on board the vessel at the time of her capture. I don't know how many. I heard Sailing Master Wells (who brought the vessel into New York) say so. He was a sailing-master in the navy, and had command of a steamer there. He brought the prize into this port.

39. To the 39th interrogatory he says: I have already answered this interrogatory as fully as I am able.

40. To the 40th interrogatory he says: I know nothing of the matters herein enquired of.

41. To the 41st interrogatory he says: I think the Napoleon attempted two or three times to run the blockade at Hatteras inlet. I heard this on board my vessel. It was the common report through the fleet.

42. To the 42d interrogatory he says: I have heard that the Napoleon was commissioned as a privateer by the southern confederacy. I do not think this commission was on board at the time of the capture. I do not know what papers were on board. I do not know what acts had been done by the Napoleon under this commission before her capture.

45 43. To the 43d interrogatory he says: I do not know whether or not the captured vessel had ever sailed in company with any other armed vessel engaged in cruising against, and seizing as prize, the property, persons, or vessels of any citizen of the United States.

CHARLES W. ANDERSON.

46 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Edward H. Owen, one of the prize commissioners appointed by the district court of the United States for the southern district of New York, in and for the said district, do hereby certify that the foregoing

deposition of Charles W. Anderson, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced, the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the city of New York, this 25th day of April, in the year of our Lord one thousand eight hundred and sixty-two.

E. H. OWEN,
U. S. Prize Comm'r.

47 District court of the United States for the southern district of New York.

Deposition of Reed Worden, lieutenant U. S. navy, a witness produced, sworn, and examined *in preparatorio*, on the 24th day of May, in the year eighteen hundred and sixty-two, at the office of the U. S. prize commissioners, 39 Chambers st., on the standing interrogatories established by the district court of the United States for the southern district of New York, the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq., in behalf of the captors of a certain ship or vessel called the "Napoleon."

1. To the 1st interrogatory he says: I was born in Pennsylvania. I reside in New York, and have resided there about 18 months. My age is 44, and I am lieutenant in the United States navy. I am a citizen of the United States and owe allegiance to its government. I am married, and my family reside in New York.

2. To the 2d interrogatory he says: I was present at the capture of the city of Newbern, on the 13th day of March, 1862; and I was present at the capture of the schooner "Napoleon," lying, at the time of the capture of Newbern, off the city, above the
48 bridge, in the river; I captured this vessel in person—in command—and hoisted the American flag on board; this occurred an hour or more before the arrival of the Union troops off the city. I was likewise present at the capture, on the wharfs or docks, at Newbern, of the several lots of cotton, rosin, and other property, seized by Commander Rowan, in command of the U. S. squadron which captured Newbern, and which, I was informed by Com'r Rowan, had been sent by him to New York, by several merchant vessels, for adjudication.

3. To the 3d interrogatory he say: The capture was made at Newbern, as detailed in my last answer, and was as I understand, sent

to New York; the capture was made, as before stated, at Newbern, on or about the 13th March, 1862. It was seized and captured as the property of the rebels.

4. Omit.

5. To the 5th interrogatory he says: There was no resistance made at the capture of the "Napoleon," nor of the merchandize before named. The capture was made by the "Stars and Stripes," in my command, in presence of and under the orders of Commodore Rowan and his squadron belonging to the United States navy.

6. To the 6th interrogatory he says: The vessel which made the capture, as well as the entire squadron, had commissions to act in the seizure and capture of prizes

49 7, 8. Omit.

9. To the 9th interrogatory he says: I did not belong to the captured vessel. I have no interest, nor has any witness, so far as I know, in the property captured, except as captors; our interest, if any, was acquired in that way. I know nothing about the value of the interest or of the property.

10, 11. Omit.

12, 13. Omit.

14. To the 14th interrogatory he says: I do not know who owned the vessel or the property captured. I suppose they were citizens of North Carolina. I have no further knowledge.

15. To the 15th interrogatory he says: I know of no bill of sale of any kind.

16. To the 16th interrogatory he says: I think the Napoleon was empty when captured, and that the cargo on board of her, when brought to this port, was put on board at Newbern, and was a portion of the property captured on the docks as before detailed. I know nothing about the quantity or quality of the property captured, except as previouly stated. The cotton in bales, and the barrels of rosin and naval stores in barrels, were very many; I have no idea of the number.

17. Omit.

18. To the 18th interrogatory he says: No papers were found

50 on board, and I know of no papers of any kind relating to the captured property, and have never heard of any.

19. To the 19th interrogatory he says: I do not recollect the latitude or longitnde of Newbern, the place of capture. The capture of the Napoleon was between 12 and 1 o'clock p. m. on the 12th day of March last, as before stated, and the capture of the merchandize, at Newbern, was on the same day.

20. To the 20th interrogatory he says: I know of no papers, bills of lading, or other writings of any kind, relating to the property in question.

21, 22, 23, 24. Omit.

25. To the 25th interrogatory he says: I know of no other seizure of the vessel or property.

26. To the 26th interrogatory he says: I have sustained no loss by the seizure.

27. To the 27th interrogatory he says: I know of no insurance of any kind.

28. Omit.

29. To the 29th interrogatory he says: I suppose the property is the produce of North Carolina.

30. To the 30th interrogatory he says: The property was taken from the docks at Newbern, and shipped, as I was informed, by merchant vessels to New York or northern ports.

31, 32, 33, 34. Omit.

51 35. To the 35th interrogatory he says: I found no papers of any kind, saw no papers of any kind, and do not know about any of the papers enquired about.

36. Omit.

37. To the 37th interrogatory he says: I know of no sale of the vessel or any portion of the property enquired about.

38. Omit.

39. To the 39th interrogatory he says: I believe the vessel and the merchandize captured to be the property of the rebels at or about Newbern or some portion of the so-called Confederate States.

40, 41, 42, 43. Omit.

44. Additional interrogatory prepared and filed in the district clerk's office on the 8th May, 1862. To this interrogatory he says: I suppose all the property captured was under the control of the forces of the so-called Confederate States. The cotton had been used for constructing fortifications or breastworks; the tar, or a portion of it, had been used for fire-rafts or floats, and for firing the city, or portions of the city, of Newbern. We found Newbern prior to the capture in a state of war against the United States, and was in the possession of forces in rebellion or insurrection against the government of the United States.

45. To the 45th interrogatory he says: I think I have fully answered this question in my last reply, and I now repeat and refer to that as a reply hereto.

46. In the 46th interrogatory he says: I have no knowledge or information in reply to this question except what I have already stated.

52 47. To the 47th interrogatory he says: I know from my presence, at the capture of Newbern, that all, or apparently all, the authorities of Newbern were engaged in hostile rebellion against the United States, and I know that some portion of the property in question had been used or employed in aiding and abetting the existing insurrection, and I believe that all the property seized was in possession of the authorities at war with the United States.

R. WORDEN, *Lt. U. S. N.*

Subcribed and sworn to this 24th day of May, 1862, before me.

HENRY H. ELLIOTT,
U. S. Prize Com'r.

53 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Henry H. Elliott, one of the prize commissioners appointed by the district court of the United States for the southern district of New York, in and for the said district, do hereby certify that the foregoing deposition of Reed Worden, lieutenant U. S. navy, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced, the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] my official seal at the city of New York, this 24th day of May, in the year of our Lord one thousand eight hundred and sixty-two.

HENRY H. ELLIOTT,
U. S. Prize Com'r.

55 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the 27th day of December, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," her tackle, &c.

This cause having been heard on the libel, and proofs and testimony taken *in preparatorio*, and after hearing counsel for claimants and libellants, and due deliberation being had in the premises, now, on motion of E. Delafield Smith, attorney of the United States, it is ordered, adjudged, and decreed by the court, that the schooner Napoleon, her tackle, &c., be condemned and forfeited to the United States, on the ground that the said captured property is lawful prize of war. And the said schooner, her tackle, &c., having been heretofore sold under an interlocutory order of the court, and the proceeds of such sale, amounting to the sum of $\$8,575\frac{00}{100}$, having been duly deposited as required by law, it is further ordered, adjudged and decreed, that the costs and disbursements herein be adjusted and paid according to law. That the prize commissioners sha'l
56 proceed, under the direction of the court, as soon as possible after the entry of this decree, to take the requisite evidence,

and report the same to the court, to the end that a final decree may be made herein, determining what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture.

(Signed) SAM'L R. BETTS.

Filed Dec'r 27th, 1862.

57 United States district court, southern district of New York.

THE UNITED STATES
ag't
THE SCHOONER "NAPOLEON," her tackle, apparel, &c.
DAVID COLDEN MURRAY, claimant.
} In prize.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Thomas Curtis, of Hoboken, in the State of New Jersey, being duly sworn, says, that he is now and was in March, 1862, master of the schooner Emily, of New York; that being about to proceed on a voyage from the port of New York to Hatteras inlet, with cargo for the expedition of General Burnside, that on the 1st day of March, 1862, he received instructions from David Colden Murray, the claimant herein, in the city of New York, to look for, and if possible secure and take possession for him, of the schooner Napoleon, which said Mr. Murray claimed as his vessel.

That deponent arrived with his vessel at Hatteras inlet before the departure of Gen. Burnside's expedition for Newbern from Roanoke; that he followed that expedition from Hatteras inlet to Newbern; that he arrived at Newbern immediately after the capture, and finding the schooner Napoleon there, he called forthwith upon General Burnside and upon Commodore Rowan, and on behalf of Mr. Murray claimed possession of the said schooner; that General Burn-
58 side referred this deponent to Commodore Rowan, who gave no satisfactory answer; that deponent examined said schooner immediately after her capture; that there were no guns whatever on board of her, and that he saw no flags of any kind; that her bulwarks were not pierced for guns, and that there was no place on the schooner indicating that guns had been or could have been worked on board of her; her sails were not bent, and that he saw none on board, but learned afterwards from the occupant of a warehouse near the wharf, that her sails were stored in that building, and that deponent then and there saw the sails which were so alleged to be the sails of the Napoleon; that deponent does not believe that it is possible, from her appearance, or anything about her, that said vessel could have been used for harbor defence; that this deponent was in the office of the prize commissioner, Mr. Elliott, during a portion of the examination of Acting Master Wells, taken and used in this case; that in answer to a question put to Mr. Wells, whether he saw the guns on board the Napoleon, he said he did *not see them;* that deponent was

then prize master of cargo on board the schooner Emily, sent from Newbern, and was then before the commissioner, Mr. Elliott, being examined as a witness on behalf of the government in relation to his prize cargo; that at the place where the Napoleon was lying in the river Trent, the water is fresh, and that he supplied his own
59 vessel from the water of the river. And further saith not.

THOS. CURTIS.

Sworn to before me this 15th day of December, 1862.

HENRY E. HOWLAND,
Notary Public, New York City.

Endorsed: U. S. district court. The United States *vs.* The Schooner Napoleon, her tackle, apparel, &c. D. Colden Murray, claimant. Affidavit of Thomas Curtis.

JOHN SHERWOOD,
Proctor for Claim't.

U. S. district court.

THE UNITED STATES
ag't
THE SCHOONER NAPOLEON, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

David Colden Murray, being duly affirmed, says, that he is the claimant of the schooner above named; that he is the owner of seven-eighths of said schooner Napoleon; that he is prepared to prove his title to seven-eighths of the said vessel, and to show to this court that she was transferred to him prior to the war; that she was then engaged in running to the West Indies from New-
60 bern, North Carolina; that he attempted to have her brought to this port, but that, being in the port of Newbern when the blockade commenced, that she remained there; that he used every exertion to obtain possession of her, and sent by an agent to General Burnside, whom he supposed was the military commander of the expedition, to obtain such possession; that he is prepared to show that she had no guns on board, and that the only witness who attempts to prove that she had, (Acting Master Wells,) said, on his examination before the commissioner, that he saw no guns; that he can prove that she was not prepared or fitted for guns or armament of any kind; that he believes she was not engaged in the defence of the harbor, or other hostile employment, and that he can prove it.

That he prays that this honorable court will grant an order that he may be allowed to put in further proofs on the subjects above set forth, and especially that Acting Master Wells may be further examined on the question of his personal knowledge of the matters he undertakes to prove.

D. COLDEN MURRAY.

Affirmed to before me this 31st day of December, 1862.

HENRY E. HOWLAND,
Notary Public, New York City.

61 U. S. district court.

THE UNITED STATES
ag't
THE SCHOONER NAPOLEON, her tackle, &c.

Take notice, that on the within affidavits I shall make a motion before the Hon. Samuel R. Betts, at his chambers, on the 3d day of January, 1863, at the opening of the court, for an order that the claimant may put in further and other proofs in this cause, as set forth in the affidavit of the claimant herein.

Yours, &c.,

JOHN SHERWOOD,
Proctor for Claimant.

New York, Dec. 31, 1862.
To E. DELAFIELD SMITH, Esq.,
U. S. District Att'y.

Endorsed: U. S. district court. The United States *ag't* The Schooner Napoleon, her tackle, &c. Affid'ts and notice of motion.
JOHN SHERWOOD,
Proctor for Claimant.

Service of a copy of within affidavits and notice of motion is hereby admitted.

E. DELAFIELD SMITH,
U. S. Dist. Att'y.

62 United States district court for the southern district of New York.

THE UNITED STATES
ag't
THE SCHOONER NAPOLEON, her tackle, apparel, and furniture, and DAVID COLDEN MURRAY, claimant. } In prize.—17,166.

At a district court for the southern district of New York, held at New York on the 5th day of January, 1863.

Present, Hon. Sam'l R. Betts, justice.

The claimant in this action having made a motion for leave to put in further and other proofs on the question of hostile employment of the schooner Napoleon prior to her capture at Newbern, and on reading the affidavits of the claimant and Thomas Curtis, on hearing Mr. John Sherwood for the claimant in support of said motion, and Mr. Andrews and Mr. Upton for the United States and for the captors in opposition thereto, it is ordered that the decree in this cause be suspended, and that the claimant have leave within 15 days to take other and further proofs upon the question of the hostile employment or use of the said schooner prior to her capture.

That commissions may issue for that purpose, and that wit-
63 nesses may be examined before either of the commissioners, or may be taken by consent.

It is further ordered that the time to appeal from the decree herein be computed from the date of any order made herein, after the coming in of further proofs.

(Signed) SAM'L R. BETTS.

Endorsed: 17,166. U. S. district court. In prize. The United States *ag't* The Schooner Napoleon, her tackle, &c.

Order suspending decree and leave to take further proofs.

JOHN SHERWOOD,
Proctor for Claimant.

Filed 5th Jan'y, 1863.

64 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, &c. } In prize.—17,166.

This cause coming on for rehearing on further proofs, Mr. Sherwood reads affidavits of D. C. Murray, clm't, (objected to by Mr. Andrews,) also the affidavits of Bryan N. Longest, James Longest, Julius Lewis, Needham Case, Benjamin M. Cook, Samuel Cook, Samuel R. Sturt, and William N. Marshall, and argues in behalf of Mr. D. C. Murray, the claimant.

Mr. Andrews, ass't U. S. dist. att'y, reads affidavits of Commodore S. C. Rowan, George W. Gattin, and George W. Wallace, and argues for the libellants.

Mr. Sherwood argues in reply, and hands in brief for claimant.

Mr. Upton hands in brief for U. S. and captors.

Papers submitted.

C. A. V.

65 District court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, and furniture, DAVID COLDEN MURRAY, claimant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

David Colden Murray, of said city, being duly affirmed, deposes and says, that he is a loyal citizen of the United States of America;

that he now resides, and for many years has resided, in the city of New York, doing business as a shipping merchant in South street, in said city of New York.

That prior to the rebellion against the government of the United States he was engaged in running vessels to ports on the Gulf of Mexico and to southern ports on the Atlantic ocean, and that he owned and ran several vessels to the ports of Newbern and Wilmington, in the State of North Carolina.

That on the 11th day of April, 1860, one William P. Moore, junior, of Newbern, North Carolina, who was then owner of seven-eighths of the said Schooner Napoleon, duly executed and delivered to this deponent a mortgage upon the said seven-eighths of said schooner,
66 to secure to this deponent the payment of such drafts as he might draw upon this deponent to an amount not exceeding ten thousand dollars, with a condition that in case of the default of said Moore to provide fort he payment of said drafts, that this deponent might then and therefrom take possession of and sell at public auction the said seven-eighths of said schooner, her tackle, apparel, and furniture.

That on the 15th day of September, 1860, the said Moore being in default for the non-payment of his drafts upon and accepted by this deponent for an amount exceeding the sum of nine thousand dollars, and this deponent having duly demanded the payment thereof, which was neglected to be made by said Moore, that the said Moore then and thereupon duly executed and delivered to this deponent in consideration of his aforesaid liabilities, a bill of sale of seven-eighths of said schooner Napoleon, her tackle, apparel, and furniture, in the words and figures following:

To all to whom these presents shall come, greeting:

Know ye, that I, Wm. P. Moore, jr., of Newbern, State of North Carolina, owner of $\frac{7}{8}$ths of the schooner or vessel called the Napoleon, of the burthen of 260 92-95 tons or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by D. Colden Murray, of the city, county, and State of New York, the receipt whereof I do hereby acknowledge, and am herewith fully satisfied, contended, and paid, have bargained and
67 sold, and by these presents do bargain and sell, unto the said D. Colden Murray, his executors, administrators, and assigns, seven-eighths of the said schooner or vessel, together with seven-eighths the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the enrolment of which said schooner or vessel is as follows, to wit:

No. ———

Enrolment in conformity to an act of the Congress of the United States of America entitled "An act for enrolling and licensing ships

That commissions may issue for that purpose, and that wit-
63 nesses may be examined before either of the commissioners, or may be taken by consent.

It is further ordered that the time to appeal from the decree herein be computed from the date of any order made herein, after the coming in of further proofs.

(Signed) SAM'L R. BETTS.

Endorsed: 17,166. U. S. district court. In prize. The United States *ag't* The Schooner Napoleon, her tackle, &c.

Order suspending decree and leave to take further proofs.

JOHN SHERWOOD,
Proctor for Claimant.

Filed 5th Jan'y, 1863.

64 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, &c. } In prize.—17,166.

This cause coming on for rehearing on further proofs, Mr. Sherwood reads affidavits of D. C. Murray, clm't, (objected to by Mr. Andrews,) also the affidavits of Bryan N. Longest, James Longest, Julius Lewis, Needham Case, Benjamin M. Cook, Samuel Cook, Samuel R. Sturt, and William N. Marshall, and argues in behalf of Mr. D. C. Murray, the claimant.

Mr. Andrews, ass't U. S. dist. att'y, reads affidavits of Commodore S. C. Rowan, George W. Gattin, and George W. Wallace, and argues for the libellants.

Mr. Sherwood argues in reply, and hands in brief for claimant.

Mr. Upton hands in brief for U. S. and captors.

Papers submitted.

C. A. V.

65 District court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, and furniture, DAVID COLDEN MURRAY, claimant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

David Colden Murray, of said city, being duly affirmed, deposes and says, that he is a loyal citizen of the United States of America;

that he now resides, and for many years has resided, in the city of New York, doing business as a shipping merchant in South street, in said city of New York.

That prior to the rebellion against the government of the United States he was engaged in running vessels to ports on the Gulf of Mexico and to southern ports on the Atlantic ocean, and that he owned and ran several vessels to the ports of Newbern and Wilmington, in the State of North Carolina.

That on the 11th day of April, 1860, one William P. Moore, junior, of Newbern, North Carolina, who was then owner of seven-eighths of the said Schooner Napoleon, duly executed and delivered to this deponent a mortgage upon the said seven-eighths of said schooner,
66 to secure to this deponent the payment of such drafts as he might draw upon this deponent to an amount not exceeding ten thousand dollars, with a condition that in case of the default of said Moore to provide fort he payment of said drafts, that this deponent might then and therefrom take possession of and sell at public auction the said seven-eighths of said schooner, her tackle, apparel, and furniture.

That on the 15th day of September, 1860, the said Moore being in default for the non-payment of his drafts upon and accepted by this deponent for an amount exceeding the sum of nine thousand dollars, and this deponent having duly demanded the payment thereof, which was neglected to be made by said Moore, that the said Moore then and thereupon duly executed and delivered to this deponent in consideration of his aforesaid liabilities, a bill of sale of seven-eighths of said schooner Napoleon, her tackle, apparel, and furniture, in the words and figures following:

To all to whom these presents shall come, greeting:

Know ye, that I, Wm. P. Moore, jr., of Newbern, State of North Carolina, owner of $\frac{7}{8}$ths of the schooner or vessel called the Napoleon, of the burthen of 260 92-95 tons or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by D. Colden Murray, of the city, county, and State of New York, the receipt whereof I do hereby acknowledge, and am herewith fully satisfied, contended, and paid, have bargained and
67 sold, and by these presents do bargain and sell, unto the said D. Colden Murray, his executors, administrators, and assigns, seven-eighths of the said schooner or vessel, together with seven-eighths the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the enrolment of which said schooner or vessel is as follows, to wit:

No. ———

Enrolment in conformity to an act of the Congress of the United States of America entitled "An act for enrolling and licensing ships

or vessels to be employed in the coasting trade and fisheries, and for regulating the same;" having or subscribed the , required by the said act, and having that citizen of the United States, and owner of the ship or vessel called the , of , whereof is at present master, and as he hath , is a citizen of the United States, and that the said ship or vessel was

And , having certified that the said ship or vessel has deck and mast, and that her length is , her breadth , her depth , and that she measures tons, and that she is , has 68 , and head.

And the said , having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said has been duly enrolled at the port of .

Given under hand and seal at the port of , this day of , in the year one thousand eight hundred and .

To have and to hold the said seven-eighths of said vessel and appurtenances thereunto belonging, unto him, the said D. Colden Murray, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said D. Colden Murray, his executors, administrators, and assigns forever.

And I, the said Wm. P. Moore, jr., have, and by these presents do promise, covenant, and agree, for my heirs, executors, and administrators, to and with the said D. Colden Murray, his heirs, executors, and administrators, and assigns, to warrant and defend the said seven-eighths of said vessel, and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In tsetimony whereof, I, the said Wm. P. Moore, jr., have hereunto set my hand and seal this fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty.

WM. P. MOORE, JR.

Sealed and delivered in the presence of and acknowledge before—
WM. G. BRYAN, *Notary Public ex officio.*

69 And this deponent further saith, that he refers to the original bill of sale of said schooner Napoleon, her tackle, apparel, and furniture, now by him produced on the hearing before this honorable court.

That the said schooner had been employed, prior to the autumn of 1861, and before the blockade in the Gulf of Mexico, in and about the West India islands.

That before the blockade, and against the wishes and intentions, and in violation of the rights of this deponent, said schooner was taken to the port of Newbern; that deponent sent to his travelling agent, then in the State of North Carolina, to obtain possession of her, to have her brought to the port of New York; that in the

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disturbed condition of affairs that it was then found inexpedient and useless to attempt to obtain such possession through the courts of law, and that his said agent was unable to get such possession; that the said schooner was then detained at Newbern by duress, and against the will and intentions of this deponent.

That deponent frequently attempted afterward to obtain possession of her, and while the forces of the United States were in Albemarle sound, and before the capture of Newbern, that he authorized an agent, who was master of a vessel sailing from New York with cargo for the government forces, to obtain, if possible, the possession of the said schooner, in case of the capture of Newbern; that his said messenger, Captain Thomas Curtis, to whose
70 deposition, sworn to on the 15th day of December, this deponent prays leave to refer, failed to obtain such possession, as she was then claimed as prize.

That deponent, also sent a special agent, Captain Nickerson, to obtain possession, but without success.

And this deponent further saith, that by reason of the absence on service of the witnesses, Captain Reed Worden, and of Acting Master Wells, he has been unable to obtain their depositions in the nature of a cross-examination, and especially as to the personal knowledge of the said Wells, of matters sworn to by him, relative to there being guns or armament of any kind on board of said schooner.

And this deponent further saith, that to the best of his knowledge, information, and belief, said schooner has never been used or employed for the harbor defence of Newbern, or in any other manner hostile to the forces or to the government of the United States.

D. COLDEN MURRAY.

Affirmed to before me this 13th day of May, 1863.

HENRY E. HOWLAND,
Notary Public, New York City.

Endorsed: 17, 166. U. S. district court. The United States, ag't The Schooner "Napoleon," her tackle, &c., David Colden Murray, claimant.

Deposition and affidavit of David Colden Murray.

JOHN SHERWOOD,
Proctor for Claimant.

Filed 14th May, 1863.

71 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret County:

Brian H. Longest, (carpenter,) being duly sworn, deposeth and saith, that he resides at Beaufort, Carteret county, in the State of

North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board; that previous to her capture she had not been employed in any acts hostile to the government of the United States.

Deponent says, that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to the capture.

B. H. LONGEST.

Sworn to and subscribed before me the sixth day of March, 1863.

BENJ. L. PERRY, *J. P.*

72 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court of Carteret county, do hereby certify, that Benjamin L. Perry, whose genuine signature is attached to the within affidavit, was at the time of taking said affidavit, an acting justice of the peace for the county of Carteret aforesaid and duly authorize to administer oaths generally.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Beaufort, the 6th of March, 1863.

JAS. RUMLEY,
C. C., and Acting Notary Public.

17, 166. Filed 14th May 1863.

73 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret County:

James Longest (ship builder,) being duly sworn, deposeth and saith, that he resides at Beaufort, Carteret county, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board; that previous to her capture she had not been employed in any acts hostile to the government of the United States.

Deponent says that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to the capture.

JAMES LONGEST.

Sworn to and subscribed before me the sixth day of March, 1863.

BENJ. L. PERRY, *J. P.*

74 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court and acting notary public for the county of Carteret, in the State aforesaid, do hereby certify that Benjamin L. Perry, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Carteret aforesaid, and duly authorised to administer oaths generally.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Beaufort, the 6th of March, 1863.

[SEAL.] JAS. RUMLEY,
C. C., Acting Notary Public.

17, 166.
Filed 14th May, 1863.

75 U. S. District Court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle apparel, &c.

STATE OF NORTH CAROLINA,
Carteret County:

Julius Lewis, (merchant,) being duly sworn, deposeth and saith, that he resides at Newbern, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent above the railroad bridge when she was captured; that at the time of her capture she had no guns or other armament on board; that previous to her capture she had not been employed in any acts hostile to the government of the United States, Deponent says that he was so well acquainted with the schooner Napoleon and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to the capture.

JULIUS LEWIS.

Sworn to and subscribed before me the 5th day of March, 1863.
LACY PHILLIPS, *J. P.*

76 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court and acting notary public for the county of Carteret, in the State aforesaid, do hereby certify that Lacy Phillips, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in the State of North Carolina, and duly authorised to administer oaths generally.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Beaufort, the 6th of March, 1863.

[SEAL.] JAS. RUMLEY,
C. C., and Acting Notary Public.

17, 166.
Filed 14th May, 1863.

77 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON,
her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret county:

Needham Case, being duly sworn, deposeth and saith, he resides at Newbern, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board.

Deponent says that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to the capture.

NEEDHAM CASE.

Sworn to and subscribed before me this 5th day of March, 1863.

LACY PHILLIPS, *J. P.*

78 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court, and acting notary public for the county of Cataret, in the State aforesaid, do hereby certify that Lacy Phillips, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in the State of North Carolina, and duly authorized to administer oaths generally.

In testimony whereof, I have hereunto set my hand and af-
[SEAL.] fixed the seal of said court, at Beaufort, the 6th of March, 1863.

JAS. RUMLEY,
C. C., and Acting Notary Public.

17,156.
Filed 14 May, 1863.

79 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON,
her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret county:

Benjamin M. Cook, being duly sworn, deposeth and saith, he resides at Newbern, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture

of Newbern, in the month of March 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board.

Deponent says that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture, he must have known the fact previously to the capture.

BENJAMIN M. COOK.

Sworn to and subscribed before me this 5th day of March, 1863.
LACY PHILLIPS, *J. P.*

80 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court, and acting notary public for the county of Cateret, in the State aforesaid, do hereby certify that Lacy Phillips, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in said State of North Carolina, and duly qualified to administer oaths.

In testimony whereof, I have hereunto set my hand and af-
[SEAL.] fixed the seal of the said court at Beaufort, the 6th day of March, 1863.

JAS. RUMLEY,
C. C., and Acting Notary Public.

17,166.
Filed 14th May, 1863.

81 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret county:

Sam'l Cook, (carpenter,) being duly sworn, deposeth and saith, that he resides at Newbern, in the State of North Carolina; that he knew the schooner "Napoleon," taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board.

Deponent says that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns aboard at the time of her capture he must have known the fact previously to the capture.

SAM'L COOK.

Sworn to and subscribed before me this 5th day of March, 1863.
LACY PHILLIPS, *J. P.*

82 STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court, and acting notary public for the county of Carteret, in the State aforesaid, do hereby certify, that Lacy Phillips, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in the State of North Carolina, and duly qualified to administer oaths generally.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Beaufort, the 6th of March, 1863.

JAS. RUMLEY,
C. C., and Acting Notary Public.

17, 166.
Filed 14th of May, 1863.

83 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret county:

Sam'l R. Sturt, being duly sworn, deposeth and saith, he resides at Newbern, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board.

Deponent says, that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to her capture.

SAM'L R. STURT.

Sworn to and subscribed before me this 5th day of March, 1863.
LACY PHILLIPS, *J. P.*

STATE OF NORTH CAROLINA:

I, James Rumley, clerk of the county court, and acting notary public for the county of Carteret, in the State aforesaid, do hereby
84 certify that Lacy Phillips, whose genuine signature is attached to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in the State of North Carolina, and duly authorized to administer oaths generally.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Beaufort, the 6th day of March, [SEAL.] 1863.

JAS. RUMLEY,
C. C., and Acting Notary Public.

17, 166.
Filed 14th May, 1863.

85 U. S. district court.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, &c.

STATE OF NORTH CAROLINA,
Carteret County:

William H. Marshall, being duly sworn, deposeth and saith, he resides at Newbern, in the State of North Carolina; that he knew the schooner Napoleon, taken by the United States naval squadron at the capture of Newbern, in the month of March, 1862; that the said schooner was lying in the river Trent, above the railroad bridge, when she was captured; that at the time of her capture she had no guns or other armament on board.

Deponent says that he was so well acquainted with the schooner Napoleon, and saw her so frequently, that if she had had guns on board at the time of her capture he must have known the fact previously to the capture.

WM. H. MARSHALL.

Sworn to and subscribed before me this 5th day of March, 1863.
LACY PHILLIPS, *J. P.*

NORTH CAROLINA:

I, James Rumley, clerk of the county court, and acting notary public for the county of Cateret, in the State aforesaid, do hereby certify that Lacy Phillips, whose genuine signature is attached
86 to the within affidavit, was, at the time of taking said affidavit, an acting justice of the peace for the county of Craven, in the State of North Carolina, and duly qualified to administer oaths generally.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Beaufort, the 6th of March, 1863.
[SEAL.]
JAS. RUMLEY,
C. C., and Acting Notary Public.

17, 166.
Filed 14th May, 1863.

87 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Stephen C. Rowan, being duly sworn, deposes and says, that he is a captain in the United States navy, and that he was in command of the naval forces of the United States which, co-operating with the land force, captured the city of Newbern, North Carolina, in the month of March, 1862; that he knows the schooner Napoleon, taken possession of by the United States forces at the time of said capture; that when the city was taken, said schooner lay above the bridge, in the Trent river; that it was a matter of general notoriety at Newbern, that said schooner was owned by one Moore, a resident of Newbern,

who was well known to be a supporter of the confederate government, and is now, as deponent believes, with the rebels; that said schooner had run the blockade under a different name; that said schooner had had cannon on board, and had been used by the confederates for military purposes.

S. C. ROWAN.

Sworn to before me this 9th day of April, 1863.

HENRY H. RICE,
[SEAL.] *Notary Public, N. Y. City.*

Endorsed: U. S. district court. 17, 166. The United States *vs.* The Schooner "Napoleon." Affidavit of Commodore Rowan. E. Delafield Smith, U. S. dist. att'y.
Filed 14th May, 1863.

88 SOUTHERN DISTRICT OF NEW YORK, *ss:*

George W. Gatlin, being duly sworn, deposes and says, that he is twenty-eight years old; that he was born in the city of Newbern, State of North Carolina, and has lived there most of his life up to the present time; that he was in the city of Newbern at the time of the capture of that city by the United States forces, in March, 1862, and was at and about the city all the time for three years previous; that he knew a vessel called the schooner "Napoleon," which was lying in the Trent river, before Newbern, when that city was taken by the federal forces; that said vessel lay at Newbern from the time of the capture of Hatteras inlet to the taking of Newbern; that some time after the war commenced, deponent heard that said vessel had been taken by the war department of the confederates to be turned into and to be used as a gunboat; that deponent saw confederate soldiers several times going to and coming from said vessel; and deponent believes that said soldiers lived on board said vessel. And deponent further says that he heard, and verily believes, that said vessel was used and employed by the confederate authorities as one of the defences of the harbor of Newbern. Deponent further says, that he has heard it stated in Newbern, by federal officers, that there were cannon on board the Napoleon at the time Newbern was captured.

GEORGE W. GATLIN.

Sworn to this 21st day of March, 1863, before me.

H. H. RICE,
[SEAL.] *Notary Public, N. Y. City.*

89 Endorsed: 17, 166. U. S. district court. The United States *vs.* Schooner Napoleon, &c. Affidavit of G. W. Gatlin.
Filed 14th May, 1863.

90 SOUTHERN DISTRICT OF NEW YORK, *ss:*

George W. Wallace, being duly sworn, deposes and says, that he has lived in the city of Newbern, North Carolina, for the last nineteen years; that he knows the schooner Napoleon, captured when

said city was taken by the federal forces in March, 1862; that said vessel came to Newbern in August, 1861; that during the fall of 1861 Commodore Lynch, of the confederate navy, ordered the vessel to be taken for the use of the confederate government; that said vessel was accordingly so taken, and by command of said Commodore Lynch two cannon were mounted on her. Deponent is not certain, but thinks, from the size of said cannon, they were 32-pounders. That immediately afterwards said vessel was sent, together with other vessels, to Ocracoke inlet, in the service of the confederates; that about a week after, the said schooner Napoleon, with some of the other vessels, returned to Newbern, and the guns were then removed from her; that deponent was on board the vessel the day she sailed for Ocracoke inlet, and himself saw the two guns above mentioned. Deponent therefore says, that he knows, of his own knowledge, that the said schooner Napoleon was actually used in the service of the confederate government.

GEO. W. WALLACE.

Sworn to before me the 31st day of March, 1863.

[SEAL.] HENRY H. RICE,
Notary Public, N. Y. City.

91 Endorsed: U. S. district court. 17, 166. The United States *vs.* The Schooner Napoleon, her tackle, &c. Affidavit of George W. Wallace. E. Delafield Smith, U. S. dist. att'y. Filed 14th May, 1863.

92 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 15th day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Present: the honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE SCHOONER "NAPOLEON," her tackle, &c. } 17, 166.

This cause having been re-heard on further proofs, and counsel for the libellants and claimants having been heard, and due deliberation being had in the premises, now, on motion of E. Delafield Smith, attorney of the United States, it is ordered, adjudged, and decreed by the court, that the decree made and entered herein on the 27th day of December, 1862, be, and the same is hereby, confirmed, and that the same stand as the decree of the court in this cause; and that unless an appeal be taken herein within the time prescribed by law, the libellants have leave to execute the said decree.

93 (Signed,) SAM'L R. BETTS.

Filed 15th June, 1863.

94 U. S. district court.

THE UNITED STATES, libellants,
ag't
THE SCHOONER NAPOLEON, her tackle, &c.,
David Colden Murray, claimant.

GENTLEMEN: You will please take notice that the claimant herein appeals from the final decree, and every part thereof, rendered in the above cause in prize, to the Supreme Court of the United States, pursuant to the act of Congress approved March 3d, 1863.

Yours, &c.,

JOHN SHERWOOD,
Proctor and Advocate for Claimant.

To E. DELAFIELD SMITH, Esq.,
U. S. Dist. Att'y South'n Dist. of N. Y.
GEORGE F. BETTS, Esq., *Clerk.*

Endorsed: 17,166. U. S. dist. court. In prize. The United States ag't The Schooner Napoleon, &c. No. ——— appeal to U. S. Supreme Court.

JOHN SHERWOOD,
Proct'r for Cl'm'ts.

95 To GEORGE F. BETTS, Esq.,
Clerk U. S. Dist. Court:

Filed 20th June, 1863.

96 By the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York in the second circuit, to E. Delafield Smith, esq., attorney of the United States for the southern district of New York, proctor for the libellants, the United States, in the suit in prize of the United States of America against the schooner "Napoleon," her tackle, &c.

Whereas David Colden Murray, claimant of the schooner Napoleon, her tackle, &c., in pursuance of sec. 7 of the prize act approved March 3d, 1863, hath lately appealed to the Supreme Court of the United States from a decree rendered by the judge of the district court of the United States for the southern district of New York, made in favor of the said libellants, the United States aforesaid, wherein the said schooner "Napoleon," her tackle, &c., was condemned and forfeited as lawful prize of war, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, the twenty-fifth day of June, in the year
97 of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

(Signed,) SAM. R. BETTS.

Endorsed: In prize. Vol. 17, page 166. U. S. district court, southern district of New York. The Schooner Napoleon, her tackle, &c., David Colden Murray, claimant and appellant, *vs.* The United States of America, libellants and appellees.

Citation on appeal.

JOHN SHERWOOD,
Proctor for Appellant.

Filed June 25th, 1863.

Due service of a copy of within admitted, N. Y., June 26, 1863.

E. DELAFIELD SMITH,
U. S. D. Att'y.

98 District court of the United States for the southern district of New York.

THE UNITED STATES
vs.
THE SCHOONER NAPOLEON, her tackle, apparel, and furniture, DAVID COLDEN MURRAY, claimant and appellant. } In prize.

The appeal of David Colden Murray, the above-named claimant and appellant, respectfully sheweth, that on the 3d day of June, 1862, the above-named the United States of America filed a libel in the district court of the United States for the southern district of New York, against the schooner Napoleon, her tackle, &c., in prize; and the said schooner was seized under process issued upon said libel, and the said claimant answered said libel, and thereafter by order of said court the said schooner, her tackle, &c., were sold at public auction, and the proceeds were brought into said court; and such proceedings were had in the said cause that on the 27th day of December, 1862, a decree was made and pronounced therein by the said district court, wherein the said schooner Napoleon, her tackle, &c., was condemned, and the proceeds of the sale of said schooner Napoleon, amounting to the sum of $8,575, (dollars,) forfeited to the United States, to-
99 gether with costs. That the said cause having been, by an order of the said court, re-heard upon further proof, it was by a further decree, made on the 15th day of June, 1863, ordered, adjudged, and decreed by the court, that the decree made and entered on the 27th day of December, 1862, be confirmed, and that the same stand as the decree of the court in the said cause; and that unless an appeal be taken in said cause within the time prescribed by law, the libellants have leave to execute the said decree.

Wherefore this appellant appeals from the whole of said decree and supplemental decree of said court to the Supreme Court of the United States, and respectively prays that the said decree and supplemental decree of the said district court, and the libel, answer, pleadings, depositions, evidence, and proceedings in said cause, may

be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree and supplemental decree of the district court, and every part thereof may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated, New York, June 24th, 1863.

D. COLDEN MURRAY,
Claimant and Appellant.
JOHN SHERWOOD,
Proctor and Advocate for the said Claimant and Appellant,

100 Endorsed: U. S. district court, S. district of New York. In prize. 17,166. The United States *vs.* The Schooner Napoleon, her tackle, &c.

DAVID COLDEN MURRAY,
Claimant.

Petition of appeal.

JOHN SHERWOOD,
Proctor and Advocate for Claimant and Appellant.

Due service admitted of a copy of within petition of appeal.
N. Y., June 26th, 1863.

E. DELAFIELD SMITH,
U. S. Dist. Att'y.

Filed 26th June, 1863.

Filed November 30, 1863.